

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Leticia Garcia,

Plaintiff,

v.

Ford Motor Company,

Defendant.

No. 2:24-cv-00563-KJM-DB

ORDER

Plaintiff Leticia Garcia seeks to remand this case to state court. Defendant opposes and alternatively seeks limited jurisdictional discovery. For the reasons set forth below, the court **denies** the motion and finds defendant's request for jurisdictional discovery **moot**.

I. BACKGROUND

Plaintiff originally filed this action in San Joaquin County Superior Court on January 8, 2024, alleging her newly acquired vehicle was not repaired to conform to the applicable warranties. *See generally* Compl., Trina M. Clayton Decl. Ex. A, ECF No. 1-2. Her complaint asserts three claims: (1) breach of implied warranty of merchantability; (2) breach of express warranty; and (3) breach of the Song-Beverly Warranty Act. *Id.* ¶¶ 13–44. Plaintiff does not allege a specific amount in damages. *See generally id.* Instead, she seeks an indeterminant amount through replacement or restitution, incidental damages, consequential damages, civil penalties in an amount not to exceed two times plaintiff's actual damages, reasonable attorney's

1 fees, costs, the difference between the vehicle's value as accepted and the vehicle's value if it had
 2 been as warranted, remedies provided under Chapters 6 and 7 of Division 2 of the Commercial
 3 Code, prejudgment interest and any other relief the court deems proper. *See id.* (prayer).

4 Plaintiff served defendant on January 10, 2024. Clayton Decl. ¶ 5, ECF No. 1-1; Mot. at
 5 10,¹ ECF No. 9. On January 25, 2024, defendant received a copy of the dealership's sales
 6 contract governing plaintiff's acquisition of the subject vehicle. Tracy Ford Email, Clayton Decl.
 7 Ex. B, ECF No. 1-3; Sales Contract, Clayton Decl. Ex. C, ECF No. 1-4.

8 Defendant removed the action to this court on February 22, 2024, asserting federal
 9 diversity jurisdiction under 28 U.S.C. § 1332. *See generally* Removal Notice, ECF No. 1.
 10 Plaintiff now moves to remand, arguing defendant's removal was not timely and defendant has
 11 not properly established diversity of citizenship. *See* Mot. at 13–18. Additionally, plaintiff
 12 argues comity principles favor remand because her claims “rely entirely on California state law.”
 13 *Id.* at 18. Defendant opposes the motion, *see* Opp'n, ECF No. 10, and plaintiff has replied, *see*
 14 Reply, ECF No. 11. The court submitted the motion without oral arguments as provided under
 15 Local Rule 230(g). Min. Order (May 9, 2024), ECF No. 12.

16 **II. LEGAL STANDARD**

17 When a federal district court would have original jurisdiction over an action originally
 18 filed in state court, the action may be removed to federal court. 28 U.S.C. § 1441(a). Federal
 19 courts have original jurisdiction over civil cases in which the amount in controversy exceeds
 20 \$75,000 and the case is diverse, typically meaning it is between citizens of different states.
 21 28 U.S.C. § 1332.

22 The Ninth Circuit strictly construes the removal statute against removal jurisdiction. *Gaus*
 23 *v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The “strong presumption” against removal
 24 jurisdiction means the defendant has the burden to establish removal is proper. *Id.* A court must
 25 reject federal jurisdiction “if there is any doubt as to the right of removal in the first instance.” *Id.*
 26 After removal, “[a] motion to remand the case on the basis of any defect other than lack of subject

¹ When citing page numbers on filings, the court uses the pagination automatically generated by the CM/ECF system.

1 matter jurisdiction must be made within 30 days after the filing of the notice of removal under
2 section 1446(a).” 28 U.S.C. § 1447(c).

3 **III. ANALYSIS**

4 Plaintiff argues defendant removed the case too late, has not properly established diversity
5 jurisdiction and under principles of comity, the case should be remanded. The court addresses
6 these arguments in turn.

7 **A. Timeliness**

8 Under 28 U.S.C. § 1446(b), there are “two thirty-day periods for removing a case. The
9 first thirty-day removal period is triggered if the case stated by the initial pleading is removable
10 on its face.” *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 885 (9th Cir. 2010) (internal
11 citation and quotation marks omitted). “The second thirty-day removal period is triggered if the
12 initial pleading does not indicate that the case is removable, and the defendant receives ‘a copy of
13 an amended pleading, motion, order or other paper’ from which removability may first be
14 ascertained.” *Id.* (quoting 28 U.S.C. § 1446(b)).

15 Here, the parties dispute which thirty-day window applies. Plaintiff contends the first
16 window applies, because the information in the complaint was enough to make defendant
17 objectively aware the amount in controversy exceeded \$75,000. Mot. at 14–15; *see also* Reply at
18 7–8. However, nowhere in the complaint does plaintiff allege the actual amount in controversy.
19 *See generally* Compl. Instead, the complaint provides the make, model, year, partial VIN and
20 subject vehicle by owner name. *Id.* ¶¶ 4–5. According to plaintiff, this was enough for defendant
21 to “objectively know[.]” the amount in controversy because defendant “is the manufacturer and/or
22 distributor of the vehicle[.]” Reply at 7.

23 Defendant disagrees and argues the second thirty-day period applies. According to
24 defendant, the complaint provides “no means for determining the amount in controversy.” Opp’n
25 at 7. Instead, it was not until January 25, 2024, when it received a copy of the sales contract for
26 the vehicle, that defendant was able to determine the purchase price and subsequently the amount
27 in controversy. *Id.*; Removal Not. ¶¶ 5–7, ECF No. 1. Therefore, defendant contends its removal

1 notice was timely, because it was filed on February 22, 2024—within thirty days from when it
2 discovered the case was removable. Opp’n at 7. Defendant is correct.

3 While defendant might have easily guessed the amount in controversy in this case
4 exceeded \$75,000, under Ninth Circuit precedent, it was under no obligation to do so. *See Harris*
5 *v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005) (“[N]otice of removability under
6 § 1446(b) is determined through examination of the four corners of the applicable pleadings, not
7 through subjective knowledge or a duty to make further inquiry.”); *see also Balaoing v. Nissan N.*
8 *Am., Inc.*, No. 23-00575, 2023 WL 4234664, at *4 (E.D. Cal. June 28, 2023), *report and*
9 *recommendation adopted*, No. 23-00575, 2023 WL 5635999 (E.D. Cal. Aug. 31, 2023) (finding
10 defendant was not put on notice of removability “because no sum amount [was] expressly
11 claimed” in the initial complaint). Instead, the record indicates the sales contract was the first
12 document from which the amount in controversy could be calculated, thereby triggering the
13 second thirty-day window in 28 U.S.C. § 1446(b). *See* Opp’n at 7; *cf. El-Said v. BMW of N. Am.,*
14 *LLC*, 2020 WL 1187171, at *3 (C.D. Cal. Mar. 11, 2020) (holding similarly). Because defendant
15 filed its removal notice within thirty days of receiving the sales contract, the removal was timely.

16 **B. Diversity of Citizenship**

17 Plaintiff also argues defendant does not establish there is complete diversity between the
18 parties. *See* Mot. at 15. Specifically, plaintiff contends defendant does not establish plaintiff is
19 domiciled in California. *Id.*

20 As discussed above, for diversity jurisdiction to apply, there must be complete diversity—
21 as relevant here, the action must be between citizens of different states. 28 U.S.C. § 1332. A
22 person is a citizen of the state in which she is domiciled. *Kanter v. Warner-Lambert Co.*,
23 265 F.3d 853, 857 (9th Cir. 2001). “A person’s domicile is her permanent home, where she
24 resides with the intention to remain or to which she intends to return.” *Id.* (citation omitted).
25 Domicile is determined by several factors including: “current residence, voting registration and
26 voting practices, location of personal and real property, location of brokerage and bank accounts,
27 location of spouse and family, membership in unions and other organizations, place of

1 employment or business, driver's license and automobile registration, and payment of taxes."
2 *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986) (citations omitted).

3 In the complaint, plaintiff alleges "at all relevant times" she was "located in the State of
4 California." Compl. ¶ 1. Significantly, plaintiff does not allege she resides in California or that
5 she is domiciled here. *See generally id.* In the notice of removal, defendant notes this fact, *see*
6 Removal Notice ¶ 39, but contends several documents support its contention "plaintiff [is] and
7 was at all relevant times, a citizen and resident of the State of California," *id.* ¶ 41. First,
8 defendant cites the sales contract, which indicates plaintiff's address was in Stockton, California
9 when she purchased the vehicle. *Id.* ¶ 39; Sales Contract. Second, defendant declares each repair
10 order obtained from the selling and servicing dealers indicate plaintiff was residing in Stockton,
11 California. Clayton Decl. ¶ 12. On this record, the court finds the notice of removal plausibly
12 alleges diversity jurisdiction. *Acad. of Country Music v. Cont'l Cas. Co.*, 991 F.3d 1059, 1068
13 (9th Cir. 2021) (defendant only needs to include plausible allegations of the jurisdictional
14 elements in the notice of removal).

15 Plaintiff does not provide any evidence she is domiciled elsewhere nor does she contest
16 the accuracy of defendant's evidence. Instead, she argues simply defendant does not sufficiently
17 establish she is domiciled in California. *See generally* Mot.; Reply. To the extent plaintiff's
18 arguments create an evidentiary challenge, plaintiff has not provided any evidence to show she
19 was not at all relevant times a California citizen. *See Ibarra v. Manheim Invs., Inc.*,
20 775 F.3d 1193, 1195 (9th Cir. 2015) (citation omitted) (when defendant's diversity assertion is
21 challenged, both sides present proof and court determines by preponderance of evidence whether
22 court has jurisdiction); *see generally* Mot., Reply. Additionally, there is no evidence plaintiff is a
23 citizen of Delaware or Michigan, which would destroy diversity, given defendant's citizenship in
24 these two states. *See* Clayton Decl. ¶ 15; Ford's 10-K Filing, Clayton Decl. Ex. E, ECF
25 No. 10-6; *see also* 28 U.S.C. § 1332(c). Nor does plaintiff dispute defendant's citizenship. *See*
26 *generally* Mot.; Reply.

27 In the absence of contradictory evidence, and given defendant shows plaintiff listed a
28 California address and continued to have her car serviced in California, the court finds it is more

likely than not plaintiff and defendant are completely diverse. *See, e.g., Gonzalez v. Roto-Rooter Servs. Co.*, No. 23-4486, 2023 WL 4826190, at *4 (C.D. Cal. July 26, 2023) (denying motion to remand and finding complete diversity existed in part due to plaintiff's lack of evidence to contrary); *Bashir v. Boeing Co.*, 245 F. App'x 574, 575 (9th Cir. 2007) (unpublished) (same).

In the alternative, defendant seeks leave to conduct jurisdictional discovery. Opp'n at 10. Because the court finds the parties are diverse, the request is moot.

C. Comity

Finally, assuming this court has diversity jurisdiction, plaintiff argues this court should decline to exercise it. *See* Mot. at 18–19. According to plaintiff, because plaintiff's claims rest solely on California state law, comity principles “weigh heavily in favor of remand.” *Id.* This argument is unpersuasive. This court does not have authority to decline to exercise its diversity jurisdiction. *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 356 (1988) (diversity jurisdiction not discretionary); *cf. Sorosky v. Burroughs Corp.*, 826 F.2d 794, 805 (9th Cir. 1987) (“[A] district court does not have discretion to refuse jurisdiction over state claims in a diversity case.”). Plaintiff's comity argument is rejected.

IV. CONCLUSION

For the reasons set forth above, the court **denies** the motion to remand.

This order resolves ECF No. 9.

IT IS SO ORDERED.

DATED: July 9, 2024.


CHIEF UNITED STATES DISTRICT JUDGE